

## REMARKS

Claims 1, 4, 6, 7 and 9 have been cancelled without prejudice or disclaimer. Claims 11-14 have been withdrawn. Therefore claims 2, 3, 5, 8 and 10 are currently pending.

### ***Rejection of Claims 2, 3, 5, 8 and 10 under 35 U.S.C. § 102(e)***

Claims 2, 3, 5, 8 and 10 are rejected under 35 U.S.C. § 102(e) as being anticipated by Tiedemann, Jr. et al. U.S. Patent No. 5,914,950. This rejection is traversed.

Independent claims 2, 3, 5 and 10 require *inter alia*, determining a maximum transmission rate for a next scheduled transmission time slot calculated directly from values representing a wave of propagation condition, a data sized and a transmission error rate determined via a cyclic redundancy check for each mobile station.

The Examiner cites Tiedemann, col. 18, lines 10 to 30, and alleges that there is a direct relationship disclosed between the maximum rate and the FER, and that notwithstanding the fact that Tiedemann discloses breaking up of the calculation of the maximum rate into two steps, that is, calculating  $E_b$  from the FER and calculating the maximum rate from  $E_b$ , Tiedemann still discloses a direct relationship between the FER and the maximum rate (Paper No. 19, pages 5 and 6).

While Tiedemann discloses that the predicted  $E_b$  may be considered in assigning a transmission rate, Tiedemann does not disclose or suggest that a maximum transmission rate is calculated directly from a value representing a transmission error rate, as *inter alia* required by independent claims 2, 3, 5 and 10. In fact, Tiedemann

discloses that the  $E_b$  may be considered in assigning a transmission rate, not a value representing a transmission error rate. Therefore, Tiedemann teaches away from calculating a maximum transmission rate based directly from a value representing a transmission error rate.

The Examiner cites Tiedemann, col. 16, lines 33-39, that the cell “temporarily assign lower transmission rates to remote stations without having to wait for the next scheduling.” The Examiner alleges that this passage read in light of the entire disclosure highlights an extra capability disclosed by the invention in addition to regular scheduling capabilities. (Paper No. 19, page 6). The Examiner then cites other portions of the Tiedemann reference that disclose that calculated maximum transmission rates can be used for later frames.

The cited passage of Tiedemann, col. 16, lines 33-39, on its own terms discloses only a temporary assignment of a lower transmission rate based on the FER at a cell. That passage discloses that “the temporary transmission rate can be sent to remote stations immediately without having to wait for the next scheduling period and data transmissions at the temporary transmission rates can occur immediately or soon thereafter.”

Thus, the Examiner in combining that passage with other passages of Tiedemann seems to be making an obviousness-type rejection over Tiedemann, based on several teachings of Tiedemann that the Examiner selectively combines. However, the Examiner provides no motivation for combining the cited teachings of Tiedemann, and therefore the Examiner’s rejection constitutes impermissible hindsight reconstruction based on Applicant’s own disclosure. The temporary assignment of lower transmission

rates disclosed at col. 16, lines 33-43 is provided as an add hoc solution to a temporary problem, involving taking quick action to reduce the processing delay (Tiedemann, col. 16, lines 41-44). There is no teaching in Tiedemann that would have motivated a person of ordinary skill in the art to combine the teaching at col. 16, lines 33-43 with the other teachings cited by the Examiner. Therefore, it is respectfully submitted that Applicant's invention as claimed in independent claims 2, 3, 5 and 10 would not have been obvious to a person of ordinary skill in the art based on Tiedemann.

Accordingly, Tiedemann does not disclose or suggest Applicant's claimed invention as recited in independent claims 2, 3, 5, and 10. Claim 8 depends from independent claim 5, and thus incorporates novel and nonobvious features thereof. Therefore, claim 8 is patentably distinguishable over the prior art for at least the reasons that independent claim 5 is patentably distinguishable over the prior art. Accordingly, the rejection over Tiedemann should now be withdrawn.

For at least the reasons set forth in the foregoing discussion, Applicant believes that the Application is now allowable and respectfully requests that the Examiner reconsider the rejections and allow the Application. Should the Examiner have

any questions regarding this Amendment or the Application generally, the Examiner is invited to telephone the undersigned attorney.

Respectfully submitted,



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